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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Amanda Houghton; Charles Douglas; and
Susan Franklin, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

Compound DAO; Robert Leshner; Geoffrey
Hayes; AH Capital Management, LLC;
Polychain Alchemy, LLC; Bain Capital
Ventures (GP), LLC; Gauntlet Networks,
Inc.; Paradigm Operations LP,

Defendants.

AH Capital Management, LLC, et al.,

Counterclaimants,

v.

Amanda Houghton, et al.,

Counterclaim Defendants.

Case No. 3:22-cv-07781-WHO

**DEFENDANTS' BRIEF IN SUPPORT
OF STAY PENDING APPEAL
PURSUANT TO ECF 213**

Judge: Honorable William H. Orrick

1 In *Coinbase, Inc. v. Bielski*, the Supreme Court held that a “district court *must* stay its
 2 proceedings while [an] interlocutory appeal” under Section 16 of the FAA “is ongoing.” 599 U.S.
 3 736, 738 (2023) (emphasis added). As the Court explained, “[a]n appeal, including an
 4 interlocutory appeal, ‘divests the district court of its control over those aspects of the case involved
 5 in the appeal.’” *Id.* at 740 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58
 6 (1982)). And here, “[b]ecause the question on appeal is whether the case belongs in arbitration or
 7 instead in the district court, the entire case is essentially ‘involved in the appeal.’” *Id.* (citation
 8 omitted). *Bielski* is controlling and it ends the inquiry: “[T]he District Court [is] required to stay
 9 its proceedings.” *Id.* at 747. Indeed, *Bielski* repeatedly describes this stay as “automatic.” *E.g.*,
 10 *id.* at 742, 743, 744.

11 Despite *Bielski*, Plaintiffs have previously suggested that the Court has discretion *not* to
 12 stay proceedings if it denies a motion to compel arbitration based on waiver, rather than another
 13 ground. But nothing in *Bielski* supports the view that a district court's obligation to stay
 14 proceedings turns on the *reason* it denies arbitration. Rather, *Bielski* explains that the “benefits of
 15 arbitration . . . would be irretrievably lost” without a stay—reasoning that applies regardless of the
 16 basis for denying arbitration. *Id.* at 743. Notably, since *Bielski*, not a single court has refused to
 17 enter the “automatic” stay *Bielski* requires. *See, e.g., Gabourel v. Luxottica of Am.*, 2023 WL
 18 6851738, at *1 (C.D. Cal. June 23, 2023) (*sua sponte* reconsidering pre-*Bielski* denial of stay, and
 19 granting stay pending appeal of arbitration denial given “intervening change in controlling law”).
 20 And multiple courts have specifically rejected the argument that a denial based on waiver permits
 21 a different outcome. *See Pilkington v. Nat'l Oilwell Varco L.P.*, 2024 WL 3967638, at *3 (E.D.
 22 Ark. Aug. 28, 2024) (“The FAA appears to make no exception to [9 U.S.C. § 16], even if the
 23 reason that a district court declines to compel arbitration is that a party waived its right to
 24 arbitration.”); *TT Int'l Co. v. BMP Int'l, Inc.*, 2023 WL 5804195, at *1 (M.D. Fla. July 13, 2023)
 25 (granting stay after denying motion to compel on waiver grounds because the “Court is constrained
 26 by the *Coinbase* Court's reiteration of the rule that ‘an appeal, including an interlocutory appeal,
 27 divests the district court of its control over those aspects of the case involved in the appeal.’”).

1 On December 6, Plaintiffs moved for a certification pursuant to *Chuman v. Wright*, 960
 2 F.2d 104 (9th Cir. 1992). ECF No. 220. *Chuman* recognized a narrow exception “in the context
 3 of interlocutory qualified immunity appeals” to the rule that a notice of appeal “divests the court
 4 of jurisdiction to proceed with trial.” 960 F.2d at 104-05. Under *Chuman*, “a district court may
 5 retain jurisdiction” only if it affirmatively “certifies the appeal as either ‘frivolous or forfeited.’”
 6 *Id.* at 105. Absent such certification, the case must be stayed. *Id.*

7 By invoking *Chuman* and arguing that certification is a way for this Court to “regain[]
 8 jurisdiction,” ECF No. 220 at 2, Plaintiffs tacitly admit that filing the notice of appeal has already
 9 divested this Court of jurisdiction. They therefore essentially concede the question that this Court
 10 requested briefing on, namely, that this Court’s waiver holding alone is *not* a sufficient basis for
 11 this Court to deny a stay. ECF No. 213 at 6 n.8. But as Defendants will explain in their opposition
 12 to Plaintiffs’ motion, the *Chuman* exception is not applicable in the arbitration context. Indeed,
 13 the Supreme Court in *Bielski* directly overruled the former Ninth Circuit rule that gave district
 14 courts discretion whether to stay a case pending appeal of an arbitration denial. *See Bielski*, 599
 15 U.S. at 739 (overruling *Britton v. Co-op Banking Grp.*, 916 F.2d 1405, 1412 (9th Cir. 1990), which
 16 let district courts deny a stay pending appeal to prevent “a defendant [from] stall[ing] a trial simply
 17 by bringing a frivolous motion to compel arbitration”). And regardless, *Chuman* applies only to
 18 a “frivolous or forfeited appeal”—i.e., where *the right to appeal*, not the underlying request for
 19 relief, is waived. 960 F.2d at 105. This appeal is plainly neither forfeited nor frivolous. *Marks v.*
 20 *Clarke*, 102 F.3d 1012, 1017 n.8 (9th Cir. 1996) (appeal frivolous if “so baseless that it does not
 21 invoke appellate jurisdiction”); *Kennedy v. City of Cleveland*, 797 F.2d 297, 301 (6th Cir. 1986)
 22 (appeal forfeited if order not “appealable under law” or not “appealed within the time set by law”);
 23 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (appeal frivolous only if “it lacks an arguable basis
 24 either in law or in fact”). Because *Chuman* is unavailable for multiple separate and independent
 25 reasons, and Plaintiffs identify no other basis upon which this Court could retain jurisdiction, the
 26 case must be stayed. *Bielski*, 599 U.S. at 738.

Dated: December 9, 2024

Respectfully submitted,

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ATTESTATION

In compliance with Civil Local Rule 5-1(i)(3), I attest that all other counsel on whose behalf this filing is jointly submitted have approved of and concurred in this filing.

/s/ Susan E. Engel

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